

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FRANKLIN R. MCDANIEL,

Plaintiff,

vs.

DAVID R. FISHER, *et.al.*,

Defendants.

2:18-cv-01629-GMN-VCF

REPORT AND RECOMMENDATION
DISMISSAL WITH PREJUDICE

On September 6, 2018, the Court denied Plaintiff Franklin McDaniel's application to proceed *in forma pauperis*. (ECF No. 3). That Order also addressed deficiencies in Plaintiff's complaint (it failed to state a claim upon which relief could be granted) in case a renewed application to proceed *in forma pauperis* was later granted. (*Id.* at 3-4). The Court gave Plaintiff until October 11, 2018 to either (1) file a complete application to proceed *in forma pauperis* or (2) pay the full fee for filing a civil action and warned that "failure to timely comply with this Order may result in a recommendation that this case be dismissed with prejudice." (*Id.* at 5).

Plaintiff has not filed an amended complaint or an objection to the Court's order. In addition, Plaintiff has failed to maintain a current address with the Court as required by LSR 2-2. Notice of the Court's latest order was returned as undeliverable. (ECF No. 5). For the reasons discussed in the Court's September 6, 2018 Order (ECF No. 3), Plaintiff's complaint should be dismissed with prejudice.

1 Accordingly, and for good cause show,

2 IT IS RECOMMENDED that this action be DISMISSED WITH PREJUDICE and Judgment
3 entered, accordingly.

4 **NOTICE**

5 Under Local Rule IB 3-2, any objection to this Report and Recommendation must be in writing
6 and filed with the Clerk of the Court within 14 days. The Supreme Court has held that the courts of appeal
7 may determine that an appeal has been waived due to the failure to file objections within the specified
8 time. (*See Thomas v. Arn*, 474 U.S. 140, 142 (1985)). This circuit has also held that (1) failure to file
9 objections within the specified time and (2) failure to properly address and brief the objectionable issues
10 waives the right to appeal the District Court's order and/or appeal factual issues from the order of the
11 District Court. (*See Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch.*
12 *Dist.*, 708 F.2d 452, 454 (9th Cir. 1983)).

13
14 Pursuant to LSR 2-2, the Plaintiff must immediately file written notification with the court of any
15 change of address. The notification must include proof of service upon each opposing party or the party's
16 attorney. **Failure to comply with this Rule may result in dismissal of the action.** (*See* LSR 2-2).

17
18 DATED this 23rd day of October, 2018.

19 

20 CAM FERENBACH
21 UNITED STATES MAGISTRATE JUDGE
22
23
24
25